

1 WO

2
3
4
5
6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
8

9 Zachary Contine,

10 Plaintiff,

11 v.

12 Ronald Credio, et al.,

13 Defendants.
14

No. CV-15-00813-PHX-ESW

ORDER

15 The Court has considered Defendants' Motion to Dismiss (Doc. 9) filed on May
16 12, 2015. No response has been filed. The matter is deemed submitted for decision.¹

17 LRCiv 7.2(i) provides that if counsel does not serve and file a timely responsive
18 memorandum to a motion, such non-compliance may be deemed a consent to the granting
19 of the pending motion, and the Court may summarily dispose of the motion. Therefore,
20 the Court may summarily dispose of Defendants' Motion to Dismiss. In addition, the
21 Court finds upon review of the public records provided in Defendants' Motion to
22 Dismiss, Plaintiff's claims against Defendants are barred as a matter of law on the basis
23 of claim preclusion and issue preclusion.² In addition, Plaintiff's Complaint fails to state
24 a claim as a matter of law. Therefore, the Court will dismiss Plaintiff's Complaint with
25 prejudice on the merits.

26
27 ¹ The parties have consented to the exercise of Magistrate Judge jurisdiction
28 (Doc. 8).

² The Court may take judicial notice of public records.

1 Plaintiff previously litigated his current claim in Maricopa County Superior Court
2 CV 2013-001618. Final judgment was entered against Plaintiff in favor of the State of
3 Arizona and Arizona Department of Corrections on June 25, 2014. As employees of the
4 Arizona Department of Corrections, the named Defendants in this case are parties in
5 privity with the Arizona Department of Corrections for purposes of claim and issue
6 preclusion. *See Corbett v. Manor Care of Am., Inc.*, 146 P.3d 1027, 1039 (Ariz. Ct. App.
7 2006). Defendants correctly set forth in their Motion to Dismiss the application of the
8 legal concepts of claim and issue preclusion to this case. Defendants further persuasively
9 set forth an analysis of how Plaintiff has failed to state a claim as a matter of law.

10 For the reasons set forth in Defendants' Motion to Dismiss,

11 **IT IS ORDERED** granting Defendants' Motion to Dismiss (Doc. 9). Plaintiff's
12 Complaint (Doc. 1-2 at 1-7) is dismissed with prejudice.

13 The Court further finds, in its discretion, that Defendants are entitled to an award
14 of reasonable attorneys' fees pursuant to 42 U.S.C. § 1988(b). Application for an award
15 of attorneys' fees shall be filed in accordance with the Federal Rules of Civil Procedure
16 within ten business days of the filing of this Order.

17 Dated this 5th day of June, 2015.

18
19
20 

21 Eileen S. Willett
22 United States Magistrate Judge
23
24
25
26
27
28